



MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel
Chair

Steven Rosen
Vice Chair

June 10, 2019

Waiver 19-05-011

Pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, a public employee must not be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver of the prohibition. Section 19A-8(b)(3) states that the Ethics Commission may grant a waiver of this prohibition if the Commission concludes that the outside employment will not be likely to create an actual conflict of interest.

Jennifer Forester is a prospective hire to be a temporary, part time Therapist II at the Crisis Center operated by the Montgomery County Department of Health and Human Services (DHHS). She is employed in temporary, full time outside employment with Athena Consulting Services LLC (Athena), an entity that has contracts with DHHS to address temporary staffing needs. Her placement as an Athena employee is with DHHS's Aging and Disability Services (ADS). Because she seeks to work with an entity that contracts with her prospective County agency, she requests a waiver of the prohibition on being employed by an entity that negotiates or contracts with the County agency by which she intends to be employed.

As a Therapist II with the Crisis Center, she will be responsible for providing telephone, walk-in, mobile outreach crisis intervention and residential crisis services. At this temporary and part-time position, she will work for a total of four hours on evenings and weekends, unless she is asked by the Center to take more hours. In Ms. Forester's position with Athena at DHHS-ADS, she is assigned to handle the caseload of a County employee on medical leave. Her responsibilities include conducting psychosocial assessments, offering evaluation of supporting services for clients, providing linkages to resources, performing clinical social work case management services, and providing re-determination of clients' needs and eligibility. She serves elderly and/or disabled adult residents of Montgomery County who receive services from DHHS. Currently, all persons in this proposed caseload reside in nursing homes or other assisted living environments and are already provided treatment teams and crisis interventionists other than the Crisis Center.

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Ms. Forester's role with Athena is fully funded by a contract with the County. However, she has no management responsibility over the contract in either her DHHS job or in her position with Athena.

A waiver may be issued by the Ethics Commission upon a finding that an actual conflict of interest is unlikely. Ms. Forester is not in a position to affect the contract between DHHS and Athena. And her role as an Athena employee working at the DHHS-ADS is wholly separate and apart from her role with the Crisis Center. Ms. Forester has pledged to recuse herself in the unlikely event she is presented with an overlap client. Aside from that, Ms. Forester may accept other assignments by Athena at DHHS, as long as those assignments are not at the Crisis Center.

Pursuant to § 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of § 19A-12(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. Upon a review of the request and the Department's concurrence in and support for the waiver request, the Commission finds that there is no actual conflict of interest. Pursuant to the standard of § 19A-8(b)(3), the Commission grants the waiver of the prohibition of § 19A-12(b). The Ethics Commission conditions this waiver on Ms. Forester not working as an Athena contractor at the Crisis Center.

In reaching this decision, the Commission has relied upon the facts presented by Ms. Forester in her request for a waiver. The Commission notes that while 19A-12(b)'s prohibition is waived, the other provisions of the ethics law are not, including those prohibiting an employee from working on official matters affecting the employee's outside employer. The waiver approval is conditioned on the facts on which the waiver is based remaining unchanged. It is also conditioned on Ms. Forester not making referrals as a County employee to the outside business or soliciting other County employees to make such referrals.

For the Commission:



Rahul K. Goel, Chair